IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27-06-2006

CORAM:

THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HON'BLE MR.JUSTICE AR. RAMALINGAM

CRIMINAL APPEAL NO.753 OF 2001

1. Abdul Kareem @ Palani Babu
2. Abdul Kayum @ Chellappa
3. Sulthan Nazar
4. S.A.Mohamed Ali Khan @ Kutty
5. Mohamed Bashith @ Bashith
6. Abdul Ozir @ Ozir
7. Samjith Ahmed
8. Shajahan @ Yusuf
9. Jahangir @ Jahir .. Appellants

Vs.

Inspector of Police,
CB CID SIT,
Coimbatore. .. Respondent

Criminal Appeal under sec.374 of Crl.P.C. filed against the judgment dated 15.5.2001 made in S.C.No.1 of 2000 on the file of the Court of Sessions Judge for Bomb Blast Case, Coimbatore.

For Appellants : Mr. S. Xavier Felix

For Respondent : M/s. K.Doraisamy and
S.Jayakumar,
Public Prosecutors for
Mr. E. Raja, Addl.P.P.

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J U D G M E N T

M. KARPAGAVINAYAGAM, J.

A1 to A7, A9 and A10 are the appellants. They have been convicted for the offences under Section 120(B)(1) read with 302 and 307 of I.P.C., under Sections 3, 4(b) and 6 of the Explosive Substances Act, 1908 and under Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. Challenging the same, they have filed this appeal.

2. The short facts leading to the conviction are as follows:

(a) On 29.11.1997, one Selvaraj, Traffic Constable, was murdered at Ukkadam, Coimbatore, in retaliation of the demolition of Babri Masjid at Ayodhya on 6.12.1992. In reaction to the said incident, 18 Muslims were murdered on 30.11.1997 and 1.12.1997 at Coimbatore.

(b) In order to avenge the death of 18 Muslims, all the accused conspired together in between the third week of August and 3rd December,1997, at Coimbatore District of Tamil Nadu State and Mysore District of Karnataka State to procure explosives from A11 Riyaz Ur Rahman (approver) through his employee A8 Mohamed Dastagir. Accordingly, A7 Samjith Ahmed procured the explosive materials and handed over to A4 Mohamed Ali Khan at Samraj Nagar, Karnataka. A4 Mohamed Ali Khan transported the same from Samraj Nagar to Sathyamangalam and handed over to A9 Shajahan @ Yusuf at Sathyamangalam. A9 Yusuf kept the explosives at the office of Arivoli Iyakkam, as per the advice of A12 Mujibur Rahman, who is absconding. Then, the explosives were converted into bombs by A5 Mohamed Bashith and A10 Jahangir. The explosives were further handed over to A6 Abdul Ozir. Thereupon, A6 Abdul Ozir handed over the same to A1 Abdul Kareem on 01.12.1997. A1 Abdul Kareem, along with A2 Abdul Kayum and A3 Sulthan Nazar, kept the same at the Gym on 2.12.1997. On 3.12.1997 at about 4.00 p.m., the same was taken out from the Gym and kept in the cycle belonging to P.W.6 Manikavasagam. At about 8.15 p.m., A2 Abdul Kayum and A3 Sulthan Nazar took the said cycle and rolled it up to the scene of occurrence at U.K.P.N. Shopping Complex, Udumalpet. A1 Abdul Kareem also went along with them. Having kept the cycle near the wall of the complex, A1 put a bag containing bombs on the cycle handle bar and left. Then, within a few minutes, the bomb exploded, as a result of which, Pappammal, Nachammal and Vijayalakshmi, who were standing near the fruit stall of the complex, sustained injuries and died. The explosion caused injuries to four other persons namely, P.W.9 Latha, P.W.10 Gandhimathi, P.W.11 Satish Kumar and P.W.12 Raju. It also caused heavy damage to the complex premises.

(c) On 03.12.1997 at about 10.30 p.m., P.W.3 Sivaraj, fruit stall owner, went to Udumalpet Police Station and lodged a complaint. P.W.60, Sub-Inspector of Police, registered the complaint for the

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offences under Sections 302, 307, 324 and 427 IPC read with Section 3 of Explosive Substances Act.

(d) On the same day at about 10.45 p.m., P.W.62 Inspector of Police took up investigation. He went to the scene of occurrence, prepared observation mahazar Ex.P3 and drew rough sketch Ex.P82.

(e) On 4.12.1997, P.W.62 Inspector of Police conducted inquest over the dead bodies of the deceased Pappammal, Nachammal and Vijayalakshmi. He handed over the dead bodies to P.W.40 Doctor for conducting autopsy.

(f) P.W.40 Doctor conducted autopsy on the dead body of Vijayalakshmi and P.W.41 Doctor conducted autopsy on the dead bodies of Pappammal and Nachammal. Ex.P48 is the post-mortem certificate issued by P.W.40 and Exs.P50 and 52 are the post-mortem certificates issued by P.W.41. The doctors opined that the deceased would appear to have died of shock and haemorrhage, due to multiple blast injuries.

(g) Similarly, the injured persons, namely, P.Ws.9,10,11 and 12 were treated by Doctors, P.Ws.39, 40, 41 and 42.

(h) On 8.12.1997, P.W.62 arrested A2 Abdul Kayum @ Chellappa and A3 Sulthan Nazar and recovered M.Os.3 and 4, namely, bunch of keys and banner with writings, on the confession of A2. On 17.2.1998, A2 and A3 were taken into police custody and examined.

(i) On coming to know of the involvement of A1 Abdul Kareem @ Palani Babu, he was arrested by the Kolangodu police under Section 41 (1) (a) Cr.P.C on 16.2.1998 and the information was conveyed to the Tamil Nadu Police. Then, P.W.62 took A1 into police custody and interrogated him.

(j) On 4.3.1998, a requisition was filed for conducting identification parade in respect of A1. On 5.5.1998, identification parade was conducted by P.W.44 Judicial Magistrate, in which A1 was identified by P.Ws.1, 2, 4 and 5. Exs.P54 to P57 are the identification parade proceedings.

(k) When P.W.62 came to know that A4 to A6 were remanded in some other case, he filed an application for police custody. Accordingly, on 3.8.1998, police custody was granted for A4 to A6.

(l) On 21.8.1998, the case was transferred to the file of CBCID Special Investigation Team.

(m) On 10.9.1998, P.W.63 Inspector of Police, CBCID continued the investigation. On 15.9.1998, A7 and A8 were taken into police custody. On 20.10.1998, A9 and A10 were taken into police custody.

(n) On 19.12.1998, a requisition was given to P.W.47 to accord consent to prosecute A1 to A12, under Section 4(1) of Explosive

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Substances Act. Accordingly, P.W.47 accorded consent to prosecute the accused.

(o) On 27.12.1998, a final report was filed in P.R.C.No.1 of 1999. A11 and A12 were absconding.

(p) In the year 2000, the case was committed to the Sessions Court at Coimbatore and it was taken on file in S.C.No.1 of 2000.

(q) During the pendency of the matter before the Sessions Court, on 2.3.2000, A-11 Riyaz Ur Rahman was arrested.

(r) On 29.5.2000, statement under Section 164 Cr.P.C. was recorded from A11. Then, pardon was granted to him on 30.5.2000. He was treated as witness. A12 was absconding. So, the trial was continued as against A1 to A10 alone.

(s) During the course of trial, on the side of the prosecution, P.Ws.1 to 63 were examined, Exs.P1 to P89 were filed and M.Os.1 to 32 were marked.

(t) When the accused were questioned under Section 313 Cr.P.C., they denied their complicity in the crime. On their behalf, Exs.D1 to D4 were marked.

(u) The trial Court convicted A1 to A7, A9 and A10 for various offences and acquitted A8. Challenging the same, the accused, who have been convicted, have filed this appeal before this Court.

3. Mr.S.Xavier Felix, the learned counsel for the appellants, took us through the entire evidence and pointed out various discrepancies in the materials placed by the prosecution and contended that the case of prosecution bristles with various infirmities and consequently, all the accused are liable to be acquitted.

4. On the other hand, Mr.K.Doraisamy and Mr.S.Jayakumar, the then learned Public Prosecutors, while justifying the judgment of the trial Court, would contend that there are enough materials to find the accused guilty of the offences referred to above and as such, no interference with the finding by the trial Court is called for.

5. We have heard the submissions made by the counsel for the parties and gone through the records. We have also given our anxious consideration to the respective contentions.

6. The case of the prosecution in short is as follows:

"As a reprisal to the demolition of Babri Masjid at Ayodya and also to wreak vengeance to the death of 18 Muslims, the accused 1 to 10 along with the absconding accused by name Mujibur Rahman and the approver by name Riyaz Ur Rahman (P.W.61) hatched a criminal conspiracy in between 3rd week of August, 1997 and 3rd December, 1997

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at Coimbatore District and in pursuance of the said conspiracy, A7 Samjith Ahmed, who had no licence to deal with the explosive materials, purchased explosive materials from A8 Mohamed Dastagir, the Manager of Riyaz Ur Rahman, the approver, who is the owner of the Indian Explosives Corporation at Mysore and handed over the same to A4 Mohamed Ali Khan @ Kutty to take it to Samraj Nagar from Mysore and from Samraj Nagar to Sathyamangalam, who in turn, handed over to A9 Shajahan @ Yusuf, at Sathyamangalam and in turn, A9 Yusuf handed over the same to A12 Mujibur Rahman, the absconding accused and the same was converted into bombs by name A5 Mohamed Bashith @ Bashith and A10 Jahangir @ Jagir and the same was further handed over to A6 Abdul Ozir @ Ozir and in turn, A6 handed over to A1 Abdul Kareem @ Palani Babu on 1.12.1997. Thereupon, A1 Abdul Kareem took the improvised bombs with time-device to Udumalpet on 2.12.1997 and handed over it to A2 Abdul Kayum @ Chellappa and A3 Sulthan Nazar and A2 and A3 kept at the Gym run by them. On 3.12.1997 at about 4.00 p.m., A1 to A3 took out and placed the same in a bag and brought the same with the cycle and A1 in between 8.15 p.m. and 8.30 p.m. parked the cycle after putting the bag in the handle bar in U.K.P.N. Complex, Udumalpet, which belongs to U.K.P.N. Kandasamy and left. At about 8.30 p.m., the bomb exploded. As a result, three women, viz., Pappammal (D1), Nachammal (D2) and Vijayalakshmi (D3), who were taking juice in a fruit stall, died and four persons viz., P.W.9 Latha, P.W.10 Gandhimathi, P.W.11 Satish Kumar and P.W.12 Raju sustained injuries and further damage caused to UKPN Complex premises to an extent of Rs.2,27,500/-."

7. On the basis of the materials projecting the case of the prosecution, as indicated above, the trial Court convicted the accused except A8.

8. A8 Mohamed Dastagir, the Manager working in the Indian Explosives Corporation owned by Riyaz Ur Rahman, the approver, has been acquitted. Riyaz Ur Rahman, originally arrayed as A11, was made as an approver and examined as P.W.61.

9. The first charge relates to the offence under Section 120(B) I.P.C. As per this charge, all the accused including the approver (P.W.61), A8 (acquitted accused) and A12 (absconding accused) hatched a conspiracy to procure explosive substances from A11 through A8 and in pursuance of the same, they caused explosion in various places for causing death of the persons in retaliation to the demolition of Babri Masjid at Ayodya and to the death of 18 Muslims.

10. While dealing with the said charge, it would be better to refer to the judgments of the Supreme Court, wherein the guidelines have been given for appreciation of the evidence relating to the charge of conspiracy.

11. In SHIVANARAYAN LAXMINARAYAN JOSHI v. STATE OF MAHARASHTRA (A.I.R.1980 S.C.439), it is held as follows:

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"A conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the conspirators in pursuance of a common design."

12. In STATE (DELHI ADMINISTRATION) v. V.C. SHUKLA (A.I.R.1980 S.C.1382), it is observed thus:

"In order to prove criminal conspiracy which is punishable under Section 120-B, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence."

13. In K.R. PURUSHOTHAMAN v. STATE OF KERALA (2005(12) S.C.C.631), the Apex Court has held as under:

"While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible."

14. From the above decisions, it is clear that it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred from the circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence and that each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a complete chain of events.

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25. Bearing in mind the above principle, let us now deal with the circumstances proving the charge of conspiracy.

26. The case of the prosecution is this:

"In pursuance of the conspiracy that A1 to A12 hatched, A7 Samjith Ahmed purchased explosive materials from A11 Riyaz Ur Rahman, the approver (P.W.61) through A8 Mohamed Dastagir and handed over the same to A4 Mohamed Ali Khan @ Kutty, who in turn passed on to A12 Mujibur Rahman through A9 Shajahan @ Yusuf who made the materials as

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improvised bombs with time-device with the help of A5 Mohamed Bashith @ Bashith and A10 Jahangir @ Jahir. Thereafter, it was passed on to A6 Abdul Ozir @ Ozir, who in turn handed over the same to A1 Abdul Kareem @ Palani Babu, who caused explosion in the UKPN Complex, Udumalpet, with the assistance of A2 Abdul Kayum @ Chellappa and A3 Sulthan Nazar."

27. Let us now see the chronological factors and evaluate the available materials.

28. P.W.61 Riyaz Ur Rahman, the approver, who was originally arrayed as A11, is owning an Explosives Corporation having a licence to deal with explosives. He used to get supply of explosives from P.W.36 Ramkumar who is running an explosive company in Bangalore. Between August and December 1997, the conspiracy was hatched by A1 to A12. In pursuance of the conspiracy, the accused wanted to procure the explosive materials from A11, the approver (P.W.61).

29. According to the prosecution, in the 3rd week of August, 1997, A7 Samjith Ahmed came to the shop of P.W.61 and obtained the supply of explosives from his Manager A8 Mohamed Dastagir. The same was packed in the shop situated at Mysore. After packing, the parcel was taken to the private bus stand at Mysore. P.W.38 Yejas Basha @ Mubarak, the auto driver used to take those packed materials from the shop to the bus stand in his auto. Thereafter, he used to unload the explosive substance in the SRT Bus Service. A7 Samjith Ahmed unloaded the parcel from the auto rickshaw driven by P.W.38 and kept the parcel behind the seat of the driver, P.W.32 Chinnasamy in the bus. The luggage was loaded in the bus as if the packed bag containing soap boxes and tamarind boxes. A7 Samjith Ahmed travelled in the bus along with the luggage up to Samraj Nagar from Mysore.

30. For the purpose of proving this aspect of the matter, the prosecution examined P.W.61, the approver, the owner of the Indian Explosives Corporation, P.W.38, the auto driver and P.W.32, the bus driver. Though the said owner was arrayed as A11 as he was one of the conspirators, on the application filed by the prosecution, the said A11 was made as an approver and was examined as P.W.61.

31. Strangely, all the accused including the approver were committed by the committal court to the Sessions Court. Only the Sessions Court granted pardon under Ex.P80 and he was made as a witness. Ultimately, he was examined as P.W.61. P.W.61, the approver was examined to speak about the conspiracy hatched by all the accused. Curiously, he did not whisper anything either in his statement (Ex.P80) made before the Judicial Magistrate or in the deposition before the Court relating to conspiracy. As a matter of fact, he does not speak anything about the conspiracy nor his participation in the conspiracy. His evidence would indicate that he never met A7 personally, but A8 told him that A7 was a quarry worker and he supplied the materials to A7 through bills. Though Ex.P81, the written statement filed by A11 before the Magistrate before grant of pardon, would indicate that he has mentioned in that that he knew A7,

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the said statement would not be of any use to the prosecution, since he stated in the deposition that he never gave the said written statement Ex.P81 to the Judicial Magistrate and only at the instance of P.W.63, the Inspector of Police, he put his signature in Ex.P81. Therefore, the evidence of P.W.61, the approver and his statement in Ex.P80 pardon proceedings do not connect P.W.61, who was originally arrayed as A11, with the crime and also did not say anything about the involvement of any other accused in the alleged conspiracy. As such, the perusal of the deposition and Ex.P80 pardon proceedings would clearly indicate that there is no material placed by the prosecution with reference to the conspiracy among A1 to A12.

32. As indicated above, the bills recovered from A8 Mohamed Dastagir, who is the Manager of the approver P.W.61 Riyaz Ur Rahman, would clearly show that it was sold by A8 on behalf of P.W.61 who is a licensed dealer in explosive materials and this was informed by A8 to P.W.61 immediately thereafter. According to P.W.61, he being the licensed dealer can sell some limited quantity to the retailer with the licence. The sale through bills to A7 has been admitted by A8 in his statement under Section 313 Cr.P.C. Therefore, the sale of explosive substance by A8 to A7 cannot be said to be in pursuance of the conspiracy hatched by all the accused. On the other hand, from the evidence of P.W.61, it is clear that the sale was made by A8 to A7 after he was made to believe that the explosive materials were purchased by A7 for quarrying purpose. As such, the approver neither stated that he involved in any crime nor indicated that he was aware that others indulged in the crime. Moreover, it is to be noted that A8 has been acquitted by the trial Court.

33. P.W.38 is an auto driver. He has been examined to speak about the fact that A7 Samjith Ahmed purchased explosive materials from A8 Mohamed Dastagir at Mysore and loaded in the auto driven by him through which the explosive substance was taken to SRT bus. It is true that P.W.38 had stated that the packing materials were taken from the shop of A8 and brought to SRT Bus Stand. However, he stated in the chief examiantion that he did not know as to whether the packing contained any gelatine materials. At the same breath in cross-examination, he improved his version by stating that he went inside the shop of A8 and assisted in packing the gelatine materials. According to him, at the time of packing, P.W.61 was present and he introduced him to A7. However, this is not supported by P.W.61. On the other hand, P.W.61 would say both in Ex.P80 pardon proceedings and in the deposition before the Court that he did not meet A7 in person.

34. The next witness who speaks about the transport of the explosive materials from Mysore to Samraj Nagar is P.W.32, the Driver of the bus. According to him, the parcel was put behind his driver seat and he was informed by A7 that the parcel contained only soap bars and tamarind bars. In the cross-examination, he admitted that normally, the luggage would be kept at the top of the bus only and not behind the driver seat. P.W.31, the Driver was unable to say whether the luggage charge was collected or not. The person who is to

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verify about the luggage and collection of charge is only Conductor. Therefore, the Conductor is a proper witness to speak about the luggage being loaded in the bus. Admittedly, the Conductor was not examined. Though the alleged purchase was in the year 1997 and A7 was arrested on 28.2.1998, these witnesses (P.Ws.32 and 38) were examined only on 28.11.1998 by P.W.63. There is no reason given for their belated examination.

35. The next event is with reference to the part played by A4 Mohamed Ali Khan. According to the prosecution, A7 Samjith Ahmed travelled in the bus up to Samraj Nagar from Mysore and at Samraj Nagar, he used to get down and A4 Mohamed Ali Khan @ Kutty used to get into the bus and travel with the luggage up to Sathyamangalam. When SRT bus stopped at Sathyamangalam, he would alight from the bus and call the boy A9 Shajahan @ Yusuf to unload the parcel. Accordingly, the parcel would be unloaded from the bus and loaded in another bus which is bound for Coimbatore. Thereupon, A9 would be in charge of the parcel and he would travel in the Coimbatore bus.

36. Though PW.32, the Driver has been examined to speak about A7 accompanying the luggage up to Samraj Nagar and thereafter, A4 would get into the bus at Samraj Nagar and it would go up to Sathyamangalam, P.W.32, the Driver did not choose to say anything about the same. There is no reference about A4 in his evidence.

37. P.W.33 Palanisamy has been examined to speak about the fact that the packed materials were unloaded from the SRT bus at Sathyamangalam by A4 with the help of A9 and from there, A9 took the materials in the Coimbatore bus. P.W.33 was a lorry cleaner. According to him, the packed materials were loaded in the bus to go to Coimbatore accompanied by A9 and A4 told him that A9 is doing business in banian and the packed materials are banian and jatti. So, the prosecution has examined these witnesses only to speak to the fact that A9 took charge of the packed materials and then travelled in the Coimbatore bus. P.W.33 is neither the Conductor of the bus bound for Coimbatore from Sathyamangalam nor the Driver of the said bus. He has not given any direct evidence that A9 carried explosive substance from Sathyamangalam to Coimbatore and no evidence has been adduced that A9 reached Coimbatore with explosive substance.

38. Even though it is a case of the prosecution that the packed materials were ultimately handed over to A12 Mujibur Rahman, the prosecution has not chosen to examine any other witnesses as to how the packed materials were handed over to A12 by A9. In other words, the prosecution has produced materials to show that the explosive materials were purchased from A8 and brought and loaded in the Coimbatore bus. The fact that what happened to the packed materials subsequent to that has not been explained by the prosecution through any evidence.

39. Let us now see the next event relating to the participation of A12, A5 and A10. According to prosecution, A12 with the help of A5 and A10 made the bomb in Vallal Nagar premises. P.W.29 Abdul Majeeth

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is the owner of the premises at Door No.26 at Vallal Nagar. The said premises was let out to Mujibur Rahman (A12), the absconding accused. Though initially, he paid rent for some months, he stopped making payment for subsequent months. Therefore, P.W.29 Abdul Majeeth asked him to vacate the premises. A12 told him that he would vacate the premises within a short time. P.W.30 Satish Kumar and P.W.31 Gopinath wanted a godown at Vallal Nagar for their business. On coming to know that the premises belonging to P.W.29 is available, they approached P.W.29 requesting for letting out the premises to them. P.W.29 informed them that the said premises has been occupied by Mujibur Rahman (A12) and he would vacate in a short time and they could very well contact Mujibur Rahman to know when he would vacate. Therefore, on 13.11.1997, P.Ws.30 and 31 went to the house of Mujibur Rahman at Door No.26, Vallal Nagar. At that time, it was locked from inside. They knocked at the door. Then, A12, the absconding accused opened the door and asked them what was the matter. Then, they told him that they wanted the premises for godown and as instructed by P.W.29, they came to enquire this A12 as to when he vacate the premises. At that point of time, both the witnesses found A5 and A10 filling some yellowish sand in TVS boxes smelling the blast of crackers. A12 told them that he would take 10 more days to vacate the house. So saying, he slapped the door and went inside. Thereafter, they left the spot.

40. The prosecution proposed to rely upon their evidence to show that the packing materials purchased from A8 were used by A12 and he made them as improvised bombs with the help of A5 and A10. P.Ws.30 and 31 speak about the fact that as instructed by P.W.29, they went and met A12 and at that time, they found A5 and A10 manufacturing the bombs with the help of explosive substance. Both P.Ws.30 and 31 admitted that when they tapped the door, Mujibur Rahman (A12) did not open the door completely, but he peeped through the door which is lightly opened, without allowing these two persons to enter into the house and asked them as to what was the matter. When they enquired him as to when he would vacate as they are in need of the premises, A12 got angry and slapped the door by saying that he would tell later. Such being the case, it is quite artificial to say that P.Ws.30 and 31 saw that A5 and A10 were inside the house indulging in the preparation of bombs. As indicated above, there is no evidence to the effect that the packing materials supplied by A8 were handed over to A12 or A5 or A10. Similarly, P.Ws.30 and 31 could not say that A5 and A10 were in the process of preparing the bombs clandestinely, especially when they were not allowed by A12 to enter into the house.

41. Further, the evidence of P.Ws.30 and 31 is not impressive, especially when their residential addresses were found to be wrong as per Exs.D1 and D2. That apart, P.W.30 would state that Mujibur Rahman before slapping the door told him that he would vacate within 10 days. But, P.W.31 would state that he told that he would tell later and slapped the door abruptly. Admittedly, P.Ws.30 and 31 were examined by P.W.63, the investigating officer only on 16.11.1998. There is no material to show that as to how these two witnesses were traced out by P.W.63 to speak about the part played by A5 and A10. Further, P.W.30 did not correctly identify A10 in the Court.

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Admittedly, A5 and A10 were strangers to P.Ws.30 and 31. Even the prosecution has not chosen to arrange for identification parade to identify A5 and A10 correctly.

42. Let us now see the next event. On 1.12.1997, P.W.23 Mahaboob Basha went to Coimbatore. A6 Abdul Ozir handed over a wooden colour bag to A1 telling him by opening the bag that it will blast if it is operated in a particular method. He instructed him to explode it at Palani and Udumalpet. P.W.23 Mahaboob Basha and P.W.24 Hakeem were examined to speak about the handing over of the bag and giving instruction to A1. It is the case of prosecution that A6 handed over the bag to A1 on 1.12.1997. According to P.W.23, he met A2 on 3.12.1997 after the blast incident. A2 told him that he did not know anything about the blast. P.W.24 would state that he met A2 on 8.12.1997 and he was informed that A3 and A1 blasted the bomb on 3.12.1997. Admittedly, P.Ws.23 and 24 were examined by P.W.63 only on 1.11.1998 and till then these witnesses did not inform about the same to any one. As a matter of fact, P.W.24 admitted that he came to know through A2 that A3 and A1 participated in the occurrence. Further, both of them stated that the wooden bag was handed over by A6 to A1 and instruction was given in the open place asking him to blast in two places, namely Palani and Udumalpet. They also admitted that A6 took out the wooden bag containing bomb from the house and then handed over to A1. If that is so, it is not necessary for A6 to give the secret instruction in the open place where a lot of people were standing and he would have very well taken him inside the house and given suitable instruction. Further, even though P.Ws.23 and 24 would state that A6 brought a wooden bag containing bomb device from a house, P.W.63 did not take any steps to search the said house.

43. The next event is as follows. On 2.12.1997, A1 came to the Gym run by A2 Abdul Kayum @ Chellappa and A3 Sulthan Nazar holding a bag in his shoulder. He left the bag in the Gym and all the three left. Next day at about 4.30 p.m., A1 to A3 came to the Gym and left after 10 to 15 minutes. At that time, A1 was holding a bag in his shoulder. P.W.20 Kandasamy was examined to say that A1 to A3 came to the Gym on 2.12.1997 along with the bag and next day, all the three went out with the bag. P.W.20 Kandasamy though stated that all the three went together from the Gym holding a bag, he did not identify A1 in the Court. He admitted that though he received summons to participate in the identification parade to identify A1, he did not choose to participate. Even in the Court, he did not identify A1. According to him, the Gym is situated next to his house, but his evidence disclosed that he is residing at UKPN Nagar and Gym is situated at Sathik Nagar. The distance between these two places is one kilometre as admitted by P.W.1. Therefore, P.W.20 cannot be said to be a neighbour to enable him to see all the accused coming to Gym and keeping the bag inside the Gym and again on 3.12.1997, all the accused together left from the scene along with the bag.

44. Let us now come to the next event. According to prosecution, on 3.12.1997 at about 8.15 p.m., A2 Abdul Kayum and A3 Sulthan Nazar took the cycle belonging to P.W.6 Manickavasagam and rolled it up to

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the scene of occurrence at UKPN Shopping Complex, Udumalpet. A1 Abdul Kareem also went along with them having a bag in his shoulder. The cycle was kept near the wall of the complex. Then, A1 removed the bag from his shoulder and put the same on the cycle handle bar and all of them left. Within a few minutes, the bomb exploded, as a result of which, Pappammal, Nachammal and Vijayalakshmi, who were standing near the fruit stall of the complex, sustained injuries and died. The explosion caused injuries to four other persons, namely, P.W.9 Latha, P.W.10 Gandhimathi, P.W.11 Satish Kumar and P.W.12 Raju.

45. P.W.3 Sivaraj, who is the owner of the fruit stall, is the eye witness. At about 10.30 p.m. on 3.12.1997, he went to the Udumalpet Police Station and lodged a complaint with P.W.60 Sub Inspector of Police. The case was registered for the offences under Sections 302, 307, 324 and 427 I.P.C. read with Section 3 of the Explosive Substances Act.

46. Thus, the earliest document in this case is the complaint given by P.W.3 Sivaraj to P.W.60, the Sub Inspector of Police. As per this complaint, the bomb blast took place at about 8.30 p.m. In the complaint, P.W.3 stated that an identifiable person came with a bicycle at 8.00 p.m. and put the bicycle near the wall situated 20 feet away from the lodge next to his shop. In Ex.P2, the F.I.R., in column No.7, it is specifically mentioned that the said person is identifiable. According to P.W.3, as mentioned in the complaint, he saw the person who came with the cycle and put the cycle along with the bag and left the scene and within a few minutes, the bomb exploded.

47. As indicated above, the occurrence took place on 3.12.1997. The case of the prosecution is that the person who put the cycle with the bag and left the scene is A1 Abdul Kareem @ Palani Babu. He was arrested on 16.2.1998. As per the earliest document, the only person who saw the person, who came with the cycle and left the cycle near the wall is P.W.3. Even though identification parade was conducted on 5.5.1998, P.W.3 was not summoned to participate in the parade to identify A1. Strangely, P.W.3 even in the Court did not identify A1. On the other hand, he deposed that some one else has put the cycle near the wall adjoining the lodge. Admittedly, he did not point out A1 in the Court that he only parked the cycle near the wall and left the scene.

48. Before he lodged a complaint in the police station, he met the owners of the lodge, who came to the scene within 10 minutes after the blast. However, he did not tell any one about the alleged culprit, who put the cycle near the wall. He also admitted that the said fact about the identifiable person coming with cycle and putting the cycle near the wall, was not informed to the watchman also. Therefore, his evidence is of no value as it did not support the prosecution case as against the first accused.

49. The next witness who speaks about A1 to A3 coming together to the UKPN Complex along with the cycle and bag is P.W.1. According

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to him, on 3.2.1997 at about 8.00 p.m., he saw A2 Abdul Kayum @ Chellappa and A3 Sulthan Nazar taking the cycle together by rolling up and A1 Abdul Kareem @ Palani Babu carrying a bag in his shoulder accompanied them. He further stated that A3 Sulthan Nazar parked the cycle near the wall connecting the shopping complex and thereupon, A1 Abdul Kareem removed the bag from his shoulder and hanged it on the cycle handle bar and all of them went away and within a few minutes, the bomb inside the bag got exploded. As indicated above, P.W.3 had stated both in Ex.P1 complaint and in the deposition that only one person came and parked the cycle near the wall. But, P.W.1 would state that A2 and A3 came with cycle and A1 accompanied them and the cycle was brought by A2 and A3 and the bag was put in the handle bar by A1. As a matter of fact, P.W.3 would admit that before going to the police station, he met P.Ws.1 and 2 at the scene. He also informed P.Ws.1 and 2 that he would go to the police station to give a complaint. Even then, P.W.1 did not choose to inform P.W.3 that he had seen A1 to A3 participating in the occurrence. Even according to P.W.1, he did not inform about this to any one till he was examined by the police.

50. P.W.62, the first investigating officer would admit in the cross-examination that he went to the spot at 10.45 p.m. He noticed that only some Constables were there and found no other witnesses. According to P.W.1, he left the scene only in the late night and went to his village and he came back again next day at about 11.00 a.m. Admittedly, till he was examined during the course of inquest, P.W.1 did not inform any person including the police that he saw A1 to A3 coming and parking the cycle near the wall.

51. Another suspicious feature is that even though P.W.1 accompanied the injured to the hospital and thereafter, he came back to the scene, he went back to his village instead of staying in the scene to help P.W.19 and P.W.22, his relatives, who are the owners of the lodge and P.W.62, the investigating officer in assisting the investigation. When P.W.1 was asked in the cross-examination as to why he did not inform any details of the involvement of three persons in the occurrence to P.Ws.19 and 22 immediately after the occurrence even though he was with them for some time, he did not give any reply to the said question. On the other hand, he clearly admitted in the cross-examination that he did not inform anybody either in the scene place or in the village about the incident or about the persons involved in the blast. Further, even though he was said to be examined on 4.12.1997 by P.W.62, the statements of witnesses including P.W.1 were sent to the Court only on 21.8.1998, i.e. nearly after 8 months. Only thereafter, the statement of P.W.1 was sent to the Court. These things would make it clear that the presence of P.W.1 in the scene at the time of occurrence is doubtful.

52. P.W.2 is the Lodge Manager. According to him, on the date of occurrence, he was in the lodge and few minutes before the time of occurrence, all the three persons, namely A1 to A3 came to the lodge and requested for rooms for the stay of their relatives who have to attend a marriage. He has specifically stated that A2 and A3 came

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into the lodge and enquired him about the availability of the rooms and at that time, A1 Abdul Kareem @ Palani Babu was standing outside. This aspect of the evidence spoken to by P.W.2 is not at all supported by the evidence of P.Ws.1 and 3.

53. As indicated above, P.W.1 had stated that all the three came together to UKPN Complex along with cycle and the cycle was parked near the wall and the bag was put in the handle bar by A1 and all of them left. P.W.2 Lodge Manager of the UKPN Complex stated that all the three came to the lodge and while A1 Abdul Kareem @ Palani Babu was standing outside, A2 and A3 came inside the Manager's room and had a conversation with him requesting for rooms for the stay of their relatives and some time later, all the three left. But, P.W.3 had stated that one identifiable person came and parked the cycle with the bag and then left. As such, the evidence of P.W.1, P.W.2 and P.W.3 is mutually contradictory. Consequently, it has to be held that their case is not in consonance with the prosecution case.

54. P.W.4 Panchalingam is a Cashier working in the Marudham Hotel. He also admitted that four years back, A1 Abdul Kareem @ Palani Babu was working in Marudham Hotel for about three months. According to him, A1 was sent out from the hotel since he had stolen something from the hotel. It is the prosecution case that P.W.4 participated in the identification parade and identified A1. P.W.8 is the Manager in the Marudham Hotel. He also admitted that A1 was working in the hotel in which he was working as Manager. This has been corroborated by the evidence of P.W.22, the owner of the Lodge. When it is admitted by P.Ws.1,2,4,5 and 8 that A1 was working in the UKPN Complex for some period, there is no necessity for the investigating agency to ask them to identify him in the parade.

55. When it is a case of the prosecution that A1 was working in the same complex for about three months as admitted by P.Ws.1,2,4,5,8 and 22, there is no reason as to why P.W.3 did not give the particulars about A1 in the complaint Ex.P1 even though he went to the police station after informing the other witnesses that he would lodge a complaint in the police station. It is noticed that even during the course of inquest, the witnesses, namely P.Ws.1,2,4,5,8 and 22 did not state to the investigating officer that the main culprit was already known to them as he had worked in the lodge for some time.

56. According to prosecution, the identification parade was conducted on 5.5.1998 in which A1 was identified by P.W.1, P.W.2, P.W.4 and P.W.5. A1 was taken into police custody by P.W.62 investigating officer on 17.12.1997 itself. P.W.62 did not give any explanation in the deposition as to why there was such a delay. Further, P.W.62 would admit in the cross-examination that A1 was working already in the UKPN Complex as a cleaner in the hotel for some period. As admitted by P.Ws.1,2,4 and 5, they knew earlier that A1 was working as a cleaner in the hotel. P.W.3, the fruit stall owner and P.Ws.19 and 22, the owners of the lodge also would admit that A1 was working in the hotel for some time and he was sent out as

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he was suspected to have stolen something. If P.W.3 had known him earlier, there is no necessity for P.W.3 to say in the complaint that some identifiable person put the cycle with the bag. P.W.3, who knew A1 already, also, as indicated above, did not identify him in the Court. When the first accused was working for some time in the hotel in the UKPN Shopping Complex, the evidence of P.Ws.1, 2, 4 and 5, who were connected with the hotel management, that they identified A1 in the parade is of no value.

57. P.W.44 is the Judicial Magistrate who conducted the identification parade. In the cross-examination, he would admit that the accused complained to him that the police took their photographs through Cameras and Videos prior to the parade. Between 16.2.1998 and 5.5.1998, the accused persons were brought to the Judicial Magistrate Court for extension of remand on several hearings. Further, P.W.44 would state that P.W.4 Panchalingam told him that he knew A1 earlier and he had seen him two months before. It is also mentioned in Ex.P57, the identification proceedings that the accused told him that the witnesses were brought to the police station and showed to them. On this reason also, the evidence of P.Ws.1, 2, 4 and 5, who are said to have identified A1, is valueless.

58. It is well settled that success of the prosecution on the basis of circumstantial evidence will depend upon the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person.

59. In this case, the main chain of circumstances are snapped in various places. There is no link in respect of conspiracy, as indicated above, between P.W.61 and A8 on the one side and the other accused on the other side. Admittedly, there are no materials to show that the gelatine materials were handed over to A4 and then to A12 through A9 and out of those materials, the improvised bombs have been made by A12 with the help of A5 and A10 and ultimately, the same reached the hands of A1.

60. In this case, not only the important links are missing in the chain, but also that the available links would not inspire confidence in the mind of the Court to hold that the entire occurrence had been taken place in pursuance of conspiracy in the manner alleged by the prosecution. Under those circumstances, we are constrained to conclude that the materials produced by the prosecution cannot be said to have established so as to prove the guilt of all the accused. Therefore, all the accused are entitled to the benefit of doubt.

61. In fine, the appeal is allowed setting aside the conviction

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and sentence imposed upon the appellants by the trial Court. The bail bonds executed by the appellants shall stand cancelled.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

mam

To
1. THE SESSIONS JUDGE FOR BOMB
BLAST CASES, COIMBATORE.

2. -do- through THE PRL. SESSIONS JUDGE,COIMBATORE.

3. THE JUDICIAL MAGISTRATE,UDUMALPET.

4.-do- through THE CHIEF JUDICIAL MAGISTRATE,COIMBATORE.

5. THE INSPECTOR OF POLICE,
CBCID, SIT, COIMBATORE.

6. THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

7. THE DISTRICT COLLECTOR,COIMBATORE.

8. THE DIRECTOR GENERAL OF POLICE, CHENNAI -4

9. THE PUBLIC PROSECUTOR,
HIGH COURT, CHENNAI 104.

+1cc to Mr. S.Xavier Felix, Advocate Sr 27301
+1cc to Mr.Public Prosector Sr 27153

MKJ (CO)
km/31.7.

Dated 27.6.2006

JUDGMENT

CA No.753 of 2001

Allowing Appeal Against the Order dt. 15.5.2001 and made in SC No.1 of 2000 on the file of the Court of the Sessions for Bomb Blast Cases, Coimbatore etc. as stated within.

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